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of the State of California  
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5 Telephone: (916) 445-7376

6 **Attorneys for Complainant**

7  
8 BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Agency Case No.: AC-99-27

11 JOHN RUSSELL BURNETT, JR.  
12 4728 Kingbird Way  
Sacramento, California 95842

**DEFAULT DECISION AND  
ORDER; DECLARATION OF  
DEPUTY ATTORNEY GENERAL  
JESSICA M. AMGWERD**

13 Certified Public Accountant  
14 Certificate No.: 57908

15 Respondent.

16  
17 Respondent John Russell Burnett, Jr., CPA ("Respondent"), was served with the  
18 following: Accusation No. AC-99-27; Statement to Respondent; the Notice of Defense form as  
19 provided by Government Code sections 11503 and 11505. Respondent failed to file a Notice of  
20 Defense pursuant to Government Code §11506. Respondent is in default. The default of  
21 Respondent having been duly noted, the Board of Accountancy ("Board") has determined that  
22 Respondent waived his right to a hearing to contest the merits of the Accusation. Further, this  
23 Board will take action on the Accusation and evidence herein without a hearing, and makes the  
24 following findings of fact:

25 **FINDINGS OF FACT**

26 1. The Accusation was made and filed on August 12, 1999, by Carol  
27 Sigmann, in her official capacity as Executive Officer, Board of Accountancy, Department of  
28 Consumer Affairs, State of California.

1                   2.       On or about February 1, 1991, the Board issued Certified Public  
2 Accountant Certificate number 57908 to Respondent. The certificate expired on July 1, 1995  
3 through October 24, 1995 due to the following:

4                   a.       The renewal fee, required by the Business and  
5                               Professions Code 5070.6, was not paid.

6                   b.       Declaration of compliance with continuing  
7                               education regulations was not submitted.

8                   3.       On or about October 25, 1995, said certificate was renewed through June  
9 30, 1997. From July 1, 1997 through February 4, 1998, the certificate was expired due to the  
10 reasons set forth in paragraphs 2 a and b above. On February 5, 1998, the certificate was  
11 renewed through June 30, 1999. The certificate expired on June 30, 1999, for the reasons set  
12 forth in paragraphs 2 a and b, and currently is in a delinquent status.

13                   4.       Accusation No. AC-99-27 is based upon Respondent's failure to return  
14 client records and/or perform contracted services. Additionally, although Respondent has only  
15 registered with the Board to practice under his personal name, Respondent used the following  
16 names for his accountancy office located at 11344 Coloma Road, Suite 825, Gold River,  
17 California 95670:

18                               Burnett & Company,

19                               Burnett & Company, CPA's, and

20                               Burnett & Company Certified Public Accountant

21                   5.       Accusation No. AC-99-27 alleged Respondent violated the following  
22 statutes: California Business and Professions Code §5100(c) [gross negligence], §5100(h)  
23 [breach of fiduciary responsibility], §5037(b) [work papers], §5060 [firm name], and Title 16 of  
24 the California Code of Regulations §67 [name] and §68 [work papers]. There is sufficient  
25 evidence to support the allegations that Respondent violated these statutes.

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Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for gross negligence under Business and Professions Code section 5100(c) by reason of the statement of facts set forth in paragraphs 11 through 20 and 22 of the Accusation.

Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for breach of fiduciary duty under Business and Professions Code section 5100(h) by reason of the statement of facts set forth in paragraphs 11 through 20 and 23 of the Accusation.

Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for breach of failure to return work papers upon client request under Business and Professions Code section 5037(b) by reason of the statement of facts set forth in paragraphs 11, 12, 14, 17, 18 through 20, and 24 of the Accusation.

Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for improper use of firm name under Business and Professions Code section 5060(b) by reason of the statement of facts set forth in paragraphs 21 and 25 of the Accusation.

Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for improper use of firm name under Title 16 of the California Code of Regulations §67 by reason of the statement of facts set forth in paragraphs 21, 25, and 26 of the Accusation.

Based on the foregoing Findings of Fact, Respondent's license is subject to discipline for failure to return work papers upon demand of clients under Title 16 of the California Code of Regulations §68 by reason of the statement of facts set forth in paragraphs 11, 12, 14, 17, 18 through 20, and 27 of the Accusation.

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ORIGINAL

1 BILL LOCKYER, Attorney General  
of the State of California  
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6 **Attorneys for Complainant**

7 BEFORE THE  
8 BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Agency Case No.: AC-99-27

11 JOHN RUSSELL BURNETT, JR.  
12 4728 Kingbird Way  
Sacramento, California 95842

13 Certified Public Accountant  
14 Certificate No.: 57908

15 Respondent.

**DECLARATION OF DEPUTY  
ATTORNEY GENERAL  
JESSICA M. AMGWERD  
REGARDING SUFFICIENCY  
AND SERVICE OF ACCUSATION**

16  
17 I, JESSICA M. AMGWERD, declare:

18 1. I am a Deputy Attorney General employed by the State of California,  
19 Department of Justice. My business address is 1300 "I" Street, Suite 125, Sacramento,  
20 California 95814. I am the attorneys of record for Complainant in this proceeding.

21 2. I have reviewed the evidence in this case and find it legally sufficient to  
22 support the pleading filed in this matter.

23 3. John Russell Burnett, Jr. (hereinafter "Respondent"), has been a licensee  
24 of the Board of Accountancy (hereinafter "Board") and was issued Certificate No. CPA No.  
25 57908 on February 1, 1991. The certificate is currently in a delinquent status, and has  
26 not been renewed. The address of record on file with the Board for Respondent is as follows:

27 **JOHN RUSSELL BURNETT, JR.**  
28 **4728 Kingbird Way**  
**Sacramento, CA 95842**

1                   4.       On August 12, 1999, Accusation No. AC-99-27 was filed by the Board  
2 against Respondent. The Accusation alleged Respondent in 1997 and 1988, violated the  
3 following statutes: Business and Professions Code §5100(c)[gross negligence], §5100(h)  
4 [breach of fiduciary responsibility], §5037(b) [work papers], §5060 [firm name], and Title 16 of  
5 the California Code of Regulations §67 [name], and §68 [work papers].

6                   5.       On August 17, 1999, at my direction, the Accusation together with  
7 supporting papers and information, was sent via first class and certified mail, Number P970 212  
8 088 to John Russell Burnett, 4728 Kingbird Way, Sacramento, CA 95842. In addition, on  
9 August 17, 1999, at my direction, the Accusation together with supporting papers and  
10 information, was sent via first class and certified mail to Paul L. Cass, Esq., Number P970 211  
11 087. Mr. Cass is counsel for Respondent. Mr. Cass has received his two packages.

12                   6.       The first class and certified letters mailed to Respondent were both  
13 returned. The post office placed the following information on these envelopes:

14                               “Moved left no address  
15                               Unable to forward  
16                               Return to sender”

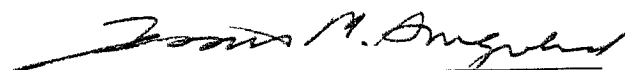
17                   7.       No response to these mailings has been received by this office, nor has a  
18 Notice of Defense been filed by Respondent. Likewise, Respondent’s Counsel has not filed a  
19 Notice of Defense on behalf of his client. Mr. Cass has left a phone message to me on  
20 September 9, 1999, informing me that he is unable to locate his client. Under Government  
21 Code §11506, a Respondent has fifteen (15) days after receiving a copy of the Accusation to  
22 respond; if Respondent fails to do so, Respondent waives the right to a hearing.

23                   Furthermore, pursuant to Government Code section 11505(c), service is  
24 effective when the Accusation is mailed to the licensee at the last address filed with the Board,  
25 whether or not the licensee has actual knowledge of the Accusation. In this case, Respondent  
26 and his counsel failed to respond to the Accusation within fifteen (15) days of mailing, or at any  
27 other time.

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1           The statements contained herein are based upon my personal knowledge and, if  
2 called as a witness in this matter, I could and would testify competently thereto. I declare under  
3 penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
4 Executed this 10 day of September, 1999, at Sacramento, California.

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7 JESSICA M. AMGWERD  
8 Deputy Attorney General

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BILL LOCKYER, Attorney General  
of the State of California  
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**Attorneys for Complainant**

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. AC-99-27

**ACCUSATION**

JOHN RUSSELL BURNETT, JR.  
4728 Kingbird Way  
Sacramento, California 95842

Certified Public Accountant  
Certificate No. 57908

Respondent.

CAROL SIGMANN alleges:

1. Complainant, Carol Sigmann, is the Executive Officer of the California  
State Board of Accountancy (hereinafter the "Board") and brings this petition solely in her  
official capacity.

**I.**

**LICENSE HISTORY**

2. On or about February 1, 1991, the Board issued Certified Public  
Accountant certificate number CPA 57908 to JOHN RUSSELL BURNETT, JR. (hereinafter  
"Respondent"). The certificate expired on July 1, 1995 through October 24, 1995 due to the  
following:

///



- 1 (a) The renewal fee, required by the Business and  
2 Professions Code 5070.5, was not paid.
- 3 (b) Declaration of compliance with continuing  
4 education regulations was not submitted.
- 5 3. On or about October 25, 1995, said certificate was renewed through June  
6 30, 1997, upon receipt of the renewal fee and declaration of compliance with continuing  
7 education requirements. July 1, 1997 through February 4, 1998, the certificate was expired due  
8 to the reasons set forth in paragraph 2 (a) and (b). On February 5, 1998, the certificate was  
9 renewed through June 30, 1999.

10 **II.**

11 **STATUTES AND REGULATIONS**

12 4. Business and Professions Code section 5100, provides a licensee may be  
13 disciplined for the following:

- 14 (c) Dishonesty, fraud, or gross negligence in the  
15 practice of public accountancy or in the  
16 performance of the bookkeeping operations  
17 described in Section 5052.
- 18 (h) Fiscal dishonesty or breach of fiduciary  
19 responsibility of any kind.

20 5. California Business and Professions Code section 5037(b) provides the  
21 following:

22 **§ 5037. Licensee's ownership of papers; furnishing  
23 papers and records to clients**

24 ...

25 (b) A licensee shall furnish to his or her client or  
26 former client, upon request and reasonable notice:

- 27 (1) A copy of the licensee's working  
28 papers, to the extent that those  
working papers include records that  
would ordinarily constitute part of  
the client's records and are not  
otherwise available to the client.
- (2) Any accounting or other records  
belonging to, or obtained from or  
on behalf of, the client which the  
licensee removed from the client's  
premises or received for the client's

1 account. The licensee may make  
2 and retain copies of documents of  
3 the client when they form the basis  
4 for work done by him or her.

5 6. California Business and Professions Code section 5060 provides the  
6 following:

7 **§ 5060. Name of person or firm; false or misleading use**

- 8 (a) No person or firm may practice public  
9 accountancy under any name which is false or  
10 misleading.  
11 (b) No person or firm may practice public  
12 accountancy under any name other than the name  
13 under which the person or firm holds a valid  
14 permit to practice issued by the board.  
15 (c) Notwithstanding subdivision (b), a sole proprietor  
16 may practice under a name other than the name set  
17 forth on his or her permit to practice, provided the  
18 name is registered by the board, is in good  
19 standing, and complies with the requirements of  
20 subdivision (a).  
21 (d) The board may adopt regulations to implement,  
22 interpret, and make specific the provisions of this  
23 section including, but not limited to, regulations  
24 designating particular forms of names as being  
25 false or misleading.

26 7. California Code of Regulations, Title 16, section 68 provides the  
27 following:

28 **Section 68. Retention of Client's Records.**

A licensee, after demand by or on behalf of a client, for books,  
Records or other data, whether in written or machine sensible  
form, that are the client's Records shall not retain such Records.  
Unpaid fees do not constitute justification for retention of client  
Records.

Although, in general the accountant's working  
papers are the property of the licensee, if such working papers  
include records which would ordinarily constitute part of the  
client's books and records and are not otherwise available to the  
client, then the information on those working papers must be  
treated the same as if it were part of the client's books and  
records.

1 8. California Code of Regulations, Title 16, section 67, provides the  
2 following:

3 **Section 67. Approval of Use of Fictitious Name.**

4 No permit holder shall practice as a principal under a name other  
5 than his or her own name until such name has been registered  
6 with the board and approved by the board as not being false or  
7 misleading.

8 9. Pursuant to Business and Professions Code section 118(b), the  
9 suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall  
10 not, during any period within which it may be renewed, restored, reissued or reinstated, deprive  
11 the Board of its authority to institute or continue a disciplinary proceeding against the licensee  
12 upon any ground provided by law or to enter an order suspending or revoking the license or  
13 otherwise taking disciplinary action against the licensee on any such ground.

14 10. Business and Professions Code section 5107 provides for recovery by the  
15 Board of all reasonable costs of investigation and prosecution of the case, including, but not  
16 limited to, attorneys' fees in specified disciplinary actions, including violations of Business and  
17 Professions Code section 5100 (c) and (h). A certified copy of the actual costs, or a good faith  
18 estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable  
19 costs of investigation and prosecution of the case.

20 **III.**

21 **GENERAL BACKGROUND**

22 11. Respondent contracted with the following individuals to perform various  
23 services, such as income tax preparation, payroll and sales tax returns:

- 24 • Greg L. Phelps (Custom Home Accessories)
- 25 • Paula A. Dutra (Bob's Glass)
- 26 • Steve J. Neptune (O.M.S. Pharmacy)
- 27 • Luita C. Auslan, CFO (Carden Sunrise Christian School, Inc.)
- 28 • John H. Nesbitt
- Scott W. Mathews ( Mathews Manufacturing Co., Inc.)

- Mike Macaulay (Car Systems)
- Richard D. Cox (River City Paper Co.)

12. Notwithstanding Respondent's agreement to perform the various services for the eight (8) clients indicated in the preceding paragraph, Respondent abandoned his accountancy practice and failed to return these clients' personal Records. The clients requested on several occasions the return of their documents; however, Respondent did not respond. As a result, the Board had to intervene and assist the eight (8) clients in finally obtaining their documents from Respondent.

13. On October 16, 1997 Mailbox Specialities, d.b.a. Custom Home Accessories ("Custom") through Mr. Phelps, hired Respondent to perform accounting work for Custom. In 1998, Respondent failed to complete the contracted accounting services for Custom, namely:

- Sales tax return for the quarter ended September 30, 1998;
- Payroll tax returns for the quarter ended September 30, 1998;
- Partnership tax returns for year ended December 31, 1997;
- Third quarter profit and loss statement and balance sheet;
- Monthly accounting services.

As a result of Respondent's failure to prepare an extension to file the partnership income tax return for the year ended December 31, 1997, as contracted for, Custom was assessed a \$300 penalty by the IRS for failing to file the income tax return by the April 15, 1998 filing date.

14. Respondent was engaged to perform accounting services for Bob's Glass through Paula Dutra that included, *inter alia*, preparation of monthly bank reconciliations and financial statements, and quarterly payroll and sales tax returns. Respondent failed to prepare Bob's payroll tax returns for the quarter ended September 30, 1998, which were due November 2, 1998. As a result of Respondent's failure to perform the agreed upon services, delinquent payroll tax returns were submitted to the requisite taxing agency. Ms. Dutra became aware in

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1 October 1998, that Respondent had abandoned his accounting practice. Ms. Dutra tried  
2 unsuccessfully to retrieve company records that were in the Respondent's possession.

3 15. Steve Neptune, owner/shareholder of O.M.S. Pharmacy, engaged the  
4 Respondent to prepare corporation income tax returns for 1997, and his personal income tax  
5 returns for 1996 and 1997. Respondent also agreed to provide O.M.S. Pharmacy with monthly  
6 accounting services for \$200 a month. Despite paying \$2,400 for income tax services and ten  
7 (10) payments of \$200 each for monthly accounting services, Respondent failed to perform the  
8 agreed upon services.

9 16. Respondent was engaged to perform accounting services for Carden  
10 Sunrise Christian School, Inc. ("Carden") through Luita C. Auslan, CFO that included, *inter*  
11 *alia*, monthly bookkeeping services including preparation of compiled financial statements and  
12 preparation of quarterly payroll tax returns. Respondent failed to prepare Carden's payroll tax  
13 returns for the quarter ended September 30, 1998, which were due November 2, 1998. As a  
14 result of Respondent's failure to perform the agreed upon services., delinquent payroll tax  
15 returns were submitted to the requisite taxing agency.

16 17. Respondent was engaged to perform accounting services for Richard D.  
17 Cox, owner/shareholder of River City Paper Co., Inc., that included, *inter alia*, preparation of  
18 corporation and personal income tax returns. Mr. Cox became aware in October 1998 that  
19 Respondent had abandoned his accounting practice. Mr. Cox tried unsuccessfully to retrieve  
20 company records that were in the Respondent's possession.

21 18. In July 1998, John H. Nesbitt engaged the respondent to prepare his 1997  
22 federal and state income tax returns and gave the respondent his original tax documentation.  
23 As the final October 15, 1998, tax deadline approached, Mr. Nesbitt tried unsuccessfully to  
24 contact the Respondent. Respondent failed to perform the agreed upon service. As a result, the  
25 tax deadline was missed subjecting Mr. Nesbitt to potential penalties and interest charges. Mr.  
26 Nesbitt became aware in November 1998, that the Respondent had abandoned his accounting  
27 practice, and he was unable to retrieve his records from the Respondent.

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1                   19.     Respondent was engaged by Scott W. Mathews, shareholder of Mathews  
2 Manufacturing Company, Inc. ("Mathews Inc."), to prepare his personal and the company's  
3 corporate income tax returns for 1997. As a result of the engagement, Mr. Mathews gave the  
4 Respondent personal tax documents. Mr. Mathews became aware that the Respondent had  
5 abandoned his accounting practice. Mr. Mathews tried unsuccessfully to retrieve his personal  
6 tax documents that were in the Respondent's possession.

7                   20.     Respondent was engaged to perform accounting services for Mike  
8 Macauley, owner of C.A.R. Systems ("CAR"), that included, *inter alia*, monthly bookkeeping,  
9 and preparation of quarterly payroll tax returns. Respondent was paid \$500 for monthly  
10 bookkeeping services; however, Respondent failed to perform the agreed upon services.  
11 Respondent also failed to prepare CAR's payroll tax returns for the quarter ended September  
12 30, 1998, which were due November 2, 1998. Mr. Macauley contacted the respondent and  
13 requested that respondent return all of CAR's business records that were in the Respondent's  
14 possession; however, the Respondent failed to return the records and then abandoned his  
15 accounting practice.

16                  21.     Respondent has failed to register with the Board to practice under a  
17 name other than his own, which is as follows: John Russell Burnett, Jr. Although Respondent  
18 was only permitted to practice under his name, he nevertheless used the following names for his  
19 accountancy office located at 11344 Coloma Road, Suite 825, Gold River, California 95670:

20                           "Burnett & Company"

21                           "Burnett & Company, CPA's", and

22                           "Burnett & Company Certified Public Accountants".

23 Respondent has not obtained permission to practice accounting under any other name except  
24 under the name John Russell Burnett, Jr.

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1 IV.

2 VIOLATIONS

3 **B&P Code § 5100(c)**

4 (Gross Negligence)

5 22. By reference paragraphs 11 through 20 are incorporated herein.

6 Respondent committed gross negligence and violated Business and Professions Code §5100(c),  
7 in failing to provide agreed upon services to clients. Further, Respondent committed gross  
8 negligence in abandoning his practice without informing his clients, thereby causing severe  
9 inconvenience and hardships to said clients.

10 **B&P Code § 5100(h)**

11 (Breach of Fiduciary Responsibility)

12 23. By reference paragraphs 11 through 20 are incorporated herein.

13 Respondent breached his fiduciary responsibility and violated Business and Professions Code §  
14 5100(h), in abandoning his accountancy practice without notice and failing to return his clients'  
15 Records.

16 **B&P Code § 5037(b)**

17 (Work Papers)

18 24. By reference paragraphs 11, 12, 14, 17, 18, 19, and 20 are incorporated  
19 herein. Respondent violated Business and Professions Code § 5037(b), by failing to return  
20 client books, Records, and/or documents upon request by his clients.

21 **B&P Code § 5060**

22 (Firm Name)

23 25. By reference paragraph 21 is incorporated herein. Respondent violated  
24 Business and Professions Code § 5060(b). The only name which Respondent holds a valid  
25 permit to practice accounting is under the name John Russell Burnett, Jr. Thus, by using the  
26 names "Burnett & Company" "Burnett & Company, CPA's", and "Burnett & Company  
27 Certified Public Accountants", Respondent has violated §5060(b). Furthermore, Respondent

28 ///

1 has not registered with the Board to practice under another name other than John Russell  
2 Burnett, Jr.

3 **Title 16 CCR, § 67**

4 (Name)

5 26. By reference paragraphs 21 and 25 are incorporated herein. Respondent  
6 violated Title 16 of the California Code of Regulations, § 67, by using a firm name that has  
7 neither been registered nor approved by the Board.

8 **Title 16 CCR, § 68**

9 (Work Papers)

10 27. By reference paragraphs 11, 12, 14, 17, 18, 19, and 20 are incorporated  
11 herein. Respondent violated Title 16 of the California Code of Regulation, § 68, by failing to  
12 return books, records or other data upon demand of his clients.

13 **V.**

14 **PRAYER**

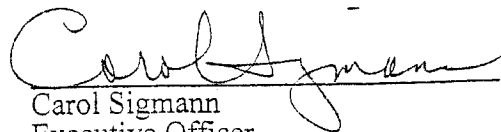
15 WHEREFORE, the Complainant requests that a hearing be held on the matters  
16 herein alleged, and that following said hearing, the Board issue a decision:

17 1. Revoking, suspending, or otherwise imposing discipline upon Certified  
18 Public Accountant Number CPA 57908 heretofore issued to respondent JOHN RUSSELL  
19 BURNETT JR.;

20 2. Awarding the Board costs as provided by statute; and,

21 3. Taking such other and further action as the Board deems proper.

22  
23 Dated: 8/12/99

24 

25 Carol Sigmann  
26 Executive Officer  
27 Board of Accountancy  
28 Department of Consumer Affairs  
State of California

Complainant